



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 09/09/2008 (Per: GMM)



Appendix A ... Pt. 09D of 09

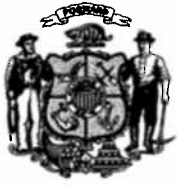
The 2007 drafting file for LRB-0174

has been transferred to the drafting file for

2009 LRB-0150

☛ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☛ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -

PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/08/2006 (Per: GMM)



☞ Appendix A ... Part 04 of 12



☞ The 2005 drafting file for LRB 05-4299

has been transferred to the drafting file for

2007 LRB 07-0174

☞ This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☞ The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

(4) (a) In any adoptive placement of an Indian child, a preference shall be given, in the absence of good cause to the contrary, to a placement in the following order of preference:

1. A member of the child's extended family.
2. Other members of the Indian child's tribe.
3. Other Indian families.

(b) If the Indian child's tribe has established a different order of preference by resolution, the court shall follow that order as long as the placement is the least restrictive setting appropriate to the particular needs of the child. Where appropriate, the preference of the Indian child or parent shall be considered.

(c) In determining the placement, the court shall apply the standard of the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or with which the parent or extended family members maintain social and cultural ties.

(d) A record of each adoptive placement of an Indian child shall be maintained by the court (?) which made the placement. The record shall evidence the efforts to comply with the order of placement preferences under pars. (a) to (c) and shall be made available at any time upon request of the secretary of the United States department of the interior or the Indian child's tribe.

(5) (a) In any voluntary proceeding for the termination of parental rights to or the adoptive placement of an Indian child, the consent of the Indian child's parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, and the child shall be returned to the parent.

(b) After the entry of a final decree of adoption of an Indian child, the parent may withdraw consent thereto upon the grounds that consent was obtained through fraud or duress and may petition the court to vacate such decree. Upon a finding that such consent was obtained through fraud or duress, the court shall vacate such decree and return the child to the parent. No adoption which has been effective for at least 2 years may be invalidated under this subsection unless otherwise permitted under the law of this state.

(Note: How does this work? How can the child be returned to the parent after a termination of parental rights? - MM)

History: 1973 c. 263; 1979 c. 330; 1981 c. 81; 1983 a. 447; 1987 a. 383; 1995 a. 443; 1997 a. 191.

Meaning of "best interests of the child" is discussed. Adoption of Tachick, 60 Wis. 2d 540, 210 N.W.2d 865.

48.913 Payments by adoptive or proposed adoptive parents to a birth parent or child or on behalf of a birth parent or child. (1) PAYMENTS ALLOWED. The

proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, may pay the actual cost of any of the following:

- (a) Preadoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
- (b) Post-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
- (c) Maternity clothes for the child's birth mother, not to exceed a reasonable amount.
- (d) Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.
- (e) Services provided by a licensed child welfare agency in connection with the adoption.
- (f) Medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child. Medical and hospital care does not include lost wages or living expenses.
- (g) Medical and hospital care received by the child.

(h) Legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption.

(i) Living expenses of the child's birth mother, in an amount not to exceed \$1,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.

(j) Any investigation ordered under s. 48.837 (4) (c), according to a fee schedule established by the department based on ability to pay.

(k) If the adoption is completed, the cost of any care provided for the child under s. 48.837 (4) (d).

(L) Birthing classes.

(m) A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 in value.

(2) PAYMENT OF EXPENSES WHEN BIRTH PARENT IS RESIDING IN ANOTHER STATE. Notwithstanding sub. (1), the proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents of a child may pay for an expense of a birth parent of the child or an alleged or presumed father of the child if the birth parent or the alleged or presumed father was residing in another state when the payment was made and when the expense was incurred and if all of the following apply:

- (a) The child was placed for adoption in this state in accordance with s. 48.988.
- (b) The state in which the birth parent or the alleged or presumed father was residing when the payment was made permits the payment of that expense by the proposed adoptive parents of the child.

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(c) A listing of all payments made under this subsection, a copy of the statutory provisions of the state in which the birth parent or the alleged or presumed father was residing when the payments were made that permit those payments to be made by the proposed adoptive parents of the child and a copy of all orders entered in the state in which the birth parent or the alleged or presumed father was residing when the payments were made that relate to the payment of expenses of the birth parent or the alleged or presumed father by the proposed adoptive parents of the child is submitted to the court as follows:

1. With the report under sub. (6), if the parental rights of either birth parent of the child are terminated in this state.

2. With a petition under s. 48.837 (2), if the parental rights of both birth parents of the child are terminated in another state and the child is placed for adoption under s. 48.837 (2).

3. With a petition under s. 48.90, if the parental rights of both parents of the child are terminated in another state and the child is placed for adoption under s. 48.833.

(3) **METHOD OF PAYMENT.** Any payment under sub. (1) or (2) shall be made directly to the provider of a good or service except that a payment under sub. (1) or (2) may be made to a birth parent of the child or to an alleged or presumed father of the child as reimbursement of an amount previously paid by the birth parent or by the alleged or presumed father if documentation is provided showing that the birth parent or alleged or presumed father has made the previous payment.

(4) **OTHER PAYMENTS PROHIBITED.** The proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may not make any payments to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child except as provided in subs. (1) and (2).

(5) **PAYMENTS AFTER FINALIZATION OF ADOPTION.** The adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may make a payment that is authorized under subs. (1) and (2) after finalization of the adoption, if the payment is included in the report under sub. (6) or an amendment to that report filed with the court.

(6) **REPORT TO THE COURT; WHEN REQUIRED.** A report containing the information specified in sub. (7) shall be provided to the court at the time of the hearing on the petition for adoptive placement under s. 48.837 (2) or upon the order of the court under s. 48.422 (7) (bm).

(7) **REPORT TO THE COURT; CONTENTS REQUIRED.** The report required under sub. (6) shall include a list of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or by a person acting on their behalf to a birth parent of the child, an alleged or presumed father of the child or the child, on behalf of a birth parent of the child, an alleged or

presumed father of the child or the child, or to any other person in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents. The report shall be itemized and shall show the goods or services for which payment was made or agreed to be made. The report shall include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any payment from the proposed adoptive parents or a person acting on behalf of the proposed adoptive parents in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents.

(8) **ADOPTION OF FOREIGN CHILDREN AND ADOPTION BY RELATIVES OF THE CHILD.** This section does not apply to an adoptive or proposed adoptive parent of a child with whom the child has been placed under s. 48.839 or to an adoptive or proposed adoptive parent of a child who is a relative of the child.

History: 1997 a. 104.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

48.915 Adoption appeals given preference. An appeal from a judgment granting or denying an adoption shall be given preference.

History: 1987 a. 383; 1993 a. 395 s. 30; Stats. 1993 s. 48.915.

48.92 Effect of adoption. (1) After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted person and the adoptive parents.

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and the adopted person's birth parents, unless the birth parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist. Notwithstanding the extinction of all parental rights under this subsection, a court may order reasonable visitation under s. 48.925.

(3) Rights of inheritance by, from and through an adopted child are governed by ss. 854.20 and 854.21.

(4) Nothing in this section shall be construed to abrogate the right of the department to make payments to adoptive families under s. 48.48 (12).

History: 1973 c. 90; 1981 c. 359 s. 16; 1991 a. 191, 316; 1997 a. 35, 188.

A valid adoption of the petitioner by his aunt would preclude his right to inherit as the son of his natural mother, although he would be entitled to inherit as a nephew. Estate of Komarr, 68 Wis. 2d 473, 228 N.W.2d 681 (1975).

Unofficial text from 03-04 Wis. Stats. database. See printed 03-04 Statutes and 2005 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, <http://www.legis.state.wi.us/rsb/>

Biological grandparents had no right to visitation following termination of their son's parental rights and adoption by the child's stepfather. *In re Marriage of Soergel*, 154 Wis. 2d 564, 453 N.W.2d 624 (1990).

Adoption of the child of a deceased parent does not terminate the decedent's parents' grandparental visitation rights under s. 880.115. *Grandparental Visitation of C.G.F.*, 168 Wis. 2d 62, 483 N.W.2d 803 (1992).

Except in the case of stepparent adoption, the parental rights of both birth parents are terminated, effectively preventing a birth parent's nonmarital partner from adopting the birth parent's child. This provision does not violate the constitutional rights of either the child or nonmarital partner. *Interest of Angel Lace M.* 184 Wis. 2d 492, 516 N.W.2d 678 (1994).

Adoption proceedings confer all parental rights on the adoptive parents and therefore resolve all issues relating to the biological grandparents' rights to assert claims for custody and guardianship. Following adoption, a change requires a showing of unfitness in the adoptive parents. *Elgin and Carol W. v. DHFS*, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998), 97-3595.

48.925 Visitation rights of certain persons. (1) Upon petition by a relative who has maintained a relationship similar to a parent-child relationship with a child who has been adopted by a stepparent or relative, the court, subject to subs. (1m) and (2), may grant reasonable visitation rights to that person if the petitioner has maintained such a relationship within 2 years prior to the filing of the petition, if the adoptive parent or parents, or, if a birth parent is the spouse of an adoptive parent, the adoptive parent and birth parent, have notice of the hearing and if the court determines all of the following:

- (a) That visitation is in the best interest of the child.
- (b) That the petitioner will not undermine the adoptive parent's or parents' relationship with the child or, if a birth parent is the spouse of an adoptive parent, the adoptive parent's and birth parent's relationship with the child.
- (c) That the petitioner will not act in a manner that is contrary to parenting decisions that are related to the child's physical, emotional, educational or spiritual welfare and that are made by the adoptive parent or parents or, if a birth parent is the spouse of an adoptive parent, by the adoptive parent and birth parent.

(1m) (a) Except as provided in par. (b), the court may not grant visitation rights under sub. (1) to a relative who has maintained a relationship similar to a parent-child relationship with a child if the relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

(am) Except as provided in par. (b), if a relative who is granted visitation rights with a child under sub. (1) is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the relative from having visitation with the child on petition of the

child or the parent, guardian or legal custodian of the child, or on the court's own motion, and on notice to the relative.

(b) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(2) Whenever possible, in making a determination under sub. (1), the court shall consider the wishes of the adopted child.

(3) This section applies to every child in this state who has been adopted, by a stepparent or relative, regardless of the date of the adoption.

(4) Any person who interferes with visitation rights granted under sub. (1) may be proceeded against for contempt of court under ch. 785, except that a court may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against that person.

History: 1991 a. 191; 1999 a. 9.
Grandparents' Visitation Rights Following Adoption: Expanding Traditional Boundaries in Wisconsin. Hintz. 1994 WLR 484.
Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.
The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

48.93 Records closed. (1) In this section, "adoptive" has the meaning given in s. 48.432 (1) (a).

(1d) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file and may not be disclosed except under sub. (1g) or (1r), s. 46.03 (29), 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order of the court for good cause shown.

(1g) At the time a court enters an order granting an adoption, it shall provide the adoptive parents with a copy of the child's medical record under s. 48.425 (1) (am) or with any information provided to the court under s. 48.422 (9) or 48.425 (2), after deleting the names and addresses of the child's birth parents and the identity of any provider of health care to the child or the child's birth parents.

(1r) Any agency which has placed a child for adoption shall, at the request of an adoptive parent or of the adoptee, after he or she has reached age 18, provide the requester without charge, except for the actual cost of reproduction, with medical or genetic information about the adoptee or about the adoptee's birth parents which it has on file and with nonidentifying social history information about the adoptee's family which it has on file, after deleting the names and addresses of the birth parents and any provider of health care to the adoptee or the adoptee's birth parents. The agency may charge a requester a fee for the cost of verifying, purging, summarizing, copying and mailing the information according to the fee schedule established by the department under s. 48.432 (3) (c). The fee may not be more than \$150 and may be waived by the agency.

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(2) All correspondence and papers, relating to the investigation, which are not a part of the court record, except those in the custody of agencies authorized to place children for adoption shall be transferred to the department and placed in its closed files.

History: 1979 c. 34; 1981 c. 359; 1983 a. 471; 1989 a. 31; 1997 a. 27, 104, 252.

Adoption records reform: Impact on adoptees. 67 MLR 110 (1983)

48.94 New birth certificate. After entry of the order granting the adoption the clerk of the court shall promptly mail a copy thereof to the state bureau of vital statistics and furnish any additional data needed for the new birth certificate. Whenever the parents by adoption, or the adopting parent and a birth parent who is the spouse of the adopting parent, request, that the birth certificate for the person adopted be not changed, then the court shall so order. In such event no new birth certificate shall be filed by the state registrar of vital statistics, notwithstanding the provisions of s. 69.15 (2) or any other law of this state.

History: 1981 c. 359 s. 16; 1985 a. 315 s. 22; 1991 a. 316.

Fundamental Rights Debate: Should Wisconsin Allow Adult Adoptees Unconditional Access to Adoption Records and Original Birth Certificates? Racine. 2002 WLR 1437.

48.95 Withdrawal or denial of petition. Except as provided under s. 48.839 (3) (b), if the petition is withdrawn or denied, the circuit court shall order the case transferred to the court assigned to exercise jurisdiction under this chapter and ch. 938 for appropriate action, except that if parental rights have been terminated and the guardian of the minor is the department, a licensed child welfare agency or a county department under s. 48.57 (1) (e) or (hm), the minor shall remain in the legal custody of the guardian.

History: 1977 c. 271, 449; 1981 c. 81; 1985 a. 176; 1995 a. 77.

48.96 Subsequent adoption. The adoption of an adopted person is authorized and, in that case, the references to parent and birth parent are to adoption parent.

History: 1981 c. 359 s. 16.

48.97 Adoption orders of other jurisdictions. (1) When the relationship of parent and child has been created by an order of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by s. 48.92. If the adoptive parents were residents of this state at the time of the foreign adoption, the preceding sentence applies only if the department has approved the placement. A child whose adoption would otherwise be valid under this section may be readopted in accordance with this chapter.

(2) The state of Wisconsin shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian

tribe applicable to Indian child custody proceedings to the same extent that the state of Wisconsin gives full faith and credit to the public acts, records, and judicial proceedings of any other entity.

History: 1971 c. 187; 1981 c. 81; 1995 a. 443.

48.975 Adoption assistance. (1) **DEFINITION.** In this section, "adoption assistance" means payments by the department to the adoptive or proposed adoptive parents of a child which are designed to assist in the cost of care of that child after an agreement under sub. (4) has been signed and the child has been placed for adoption with the adoptive or proposed adoptive parents.

(2) **APPLICABILITY.** The department may provide adoption assistance only for a child with special needs and only when the department has determined that such assistance is necessary to assure the child's adoption.

(3) **TYPES.** The department may provide adoption assistance for maintenance, medical care or nonrecurring adoption expenses, or for any combination of those types of adoption assistance, according to the following criteria:

(a) **Maintenance.** 1. Except as provided in subd. 3., for support of a child who was in foster care, treatment foster care, or subsidized guardianship care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the amount of that child's foster care, treatment foster care, or subsidized guardianship care payment at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

2. Except as provided in subd. 3., for support of a child not in foster care, treatment foster care, or subsidized guardianship care immediately prior to placement for adoption, the initial amount of adoption assistance for maintenance shall be equivalent to the uniform foster care rate in effect at the time that the agreement under sub. (4) (a) is signed or a lesser amount if agreed to by the proposed adoptive parents and specified in that agreement.

3. For support of a child who is defined under rules promulgated by the department under sub. (5) (b) as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems, the initial amount of adoption assistance for maintenance shall be \$0.

4. The amount of adoption assistance for maintenance may be changed under an amended agreement under sub. (4) (b) or (c). If an agreement is amended under sub. (4) (b) or (c), the amount of adoption assistance for maintenance shall be the amount specified in the amended agreement but may not exceed the uniform foster care rate that would be applicable to the child

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if the child were in foster care during the time for which the adoption assistance for maintenance is paid.

(b) *Medical.* The adoption assistance for medical care shall be sufficient to pay expenses due to a physical, mental or emotional condition of the child which is not covered by a health insurance policy insuring the child or the parent.

(c) *Nonrecurring adoption expenses.* Subject to any maximum amount provided by the department by rule promulgated under sub. (5), the adoption assistance for nonrecurring adoption expenses shall be sufficient to pay the reasonable and necessary adoption fees, court costs, legal fees and other expenses that are directly related to the adoption of the child and that are not incurred in violation of any state or federal law.

(3m) *DURATION.* The adoption assistance may be continued after the adoptee reaches the age of 18 if that adoptee is a full-time high school student.

(4) *PROCEDURE.* (a) Except in extenuating circumstances, as defined by the department by rule promulgated under sub. (5) (a), a written agreement to provide adoption assistance shall be made prior to adoption. An agreement to provide adoption assistance may be made only for a child who, at the time of placement for adoption, is in the guardianship of the department or other agency authorized to place children for adoption, in the guardianship of an American Indian tribal agency in this state, or in a subsidized guardianship under s. 48.62 (5).

(b) If an agreement to provide adoption assistance is in effect and if the adoptive or proposed adoptive parents of the child who is the subject of the agreement believe there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c), the adoptive or proposed adoptive parents may request that the agreement be amended to increase the amount of adoption assistance for maintenance. If a request is received under this paragraph, the department shall do all of the following:

1. Determine whether there has been a substantial change in circumstances, as defined by the department by rule promulgated under sub. (5) (c) and whether there has been a substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents.

2. If there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, offer to increase the amount of adoption assistance for maintenance based on criteria established by the department by rule promulgated under sub. (5) (d).

3. If an increased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive

parents, amend the agreement in writing to specify the increased amount of adoption assistance for maintenance.

(bm) Annually, the department shall review an agreement that has been amended under par. (b) to determine whether the substantial change in circumstances that was the basis for amending the agreement continues to exist. If that substantial change in circumstances continues to exist, the agreement, as amended, shall remain in effect. If that substantial change in circumstances no longer exists, the department shall offer to decrease the amount of adoption assistance for maintenance based on criteria established by the department under sub. (5) (dm). If the decreased amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, the department shall amend the agreement in writing to specify the decreased amount of adoption assistance for maintenance. If the decreased amount of adoption assistance for maintenance is not agreed to by the adoptive or proposed adoptive parents, the adoptive or proposed adoptive parents may appeal the decision of the department regarding the decrease under the procedure established by the department under sub. (5) (dm).

(c) The department may propose to the adoptive or proposed adoptive parents that an agreement to provide adoption assistance be amended to adjust the amount of adoption assistance for maintenance. If an adjustment in the amount of adoption assistance for maintenance is agreed to by the adoptive or proposed adoptive parents, the agreement shall be amended in writing to specify the adjusted amount of adoption assistance for maintenance.

(d) An agreement to provide adoption assistance may be amended more than once under par. (b) or (c).

(4m) *RECOVERY OF INCORRECT PAYMENTS.* The department may recover an overpayment of adoption assistance from an adoptive parent who continues to receive adoption assistance for maintenance by reducing the amount of the adoptive parent's monthly payment of adoption assistance for maintenance. The department may by rule specify other methods for recovering overpayments of adoption assistance.

(5) *RULES.* The department shall promulgate rules necessary to implement this section, which shall include all of the following:

(a) A rule defining the extenuating circumstances under which an initial agreement to provide adoption assistance under sub. (4) (a) may be made after adoption. This definition shall include all circumstances under which federal statutes, regulations or guidelines provide that federal matching funds for adoption assistance are available to the state if an initial agreement is made after adoption, but may not include circumstances under which federal statutes, regulations or

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guidelines provide that federal matching funds for adoption assistance are not available if an initial agreement is made after adoption.

(b) A rule defining a child with special needs, which shall include a child who the department determines has, at the time of placement for adoption, moderate or intensive difficulty-of-care problems, as defined by the department, or who the department determines is, at the time of placement for adoption, at high risk of developing those problems.

(c) A rule defining the substantial change in circumstances under which adoptive or proposed adoptive parents may request that an agreement made under sub. (4) be amended to increase the amount of adoption assistance for maintenance. The definition shall include all of the following:

1. Situations in which a child who was defined as a child with special needs based solely on being at high risk of developing moderate or intensive difficulty-of-care problems has developed those problems.

2. Situations in which a child's difficulty-of-care problems have increased from the moderate level to the intensive level as set forth in the department's schedule of difficulty-of-care levels promulgated by rule.

(d) Rules establishing requirements for submitting a request under sub. (4) (b), criteria for determining the amount of the increase in adoption assistance for maintenance that the department shall offer if there has been a substantial change in circumstances and if there has been no substantiated report of abuse or neglect of the child by the adoptive or proposed adoptive parents, and the procedure to appeal the decision of the department regarding the request.

(dm) Rules establishing the criteria for determining the amount of the decrease in adoption assistance for maintenance that the department shall offer under sub. (4) (bm) if a substantial change in circumstances no longer exists and the procedure to appeal the decision of the department regarding the decrease. The criteria shall provide that the amount of the decrease offered by the department under sub. (4) (bm) may not result in an amount of adoption assistance for maintenance that is less than the initial amount of adoption assistance for maintenance provided for the child under sub. (3) (a) 1., 2. or 3.

(e) A rule regarding when a child must be photolisted with the adoption information exchange under s. 48.55 in order to be eligible for adoption assistance. The rule may not require photolisting under any circumstances in which photolisting is not required by federal statutes, regulations or guidelines as a prerequisite for the state to receive federal matching funds for adoption assistance.

History: 1977 c. 418; 1985 a. 308; 1989 a. 31; 1993 a. 16, 446; 1997 a. 308; 2005 a. 25.

Cross Reference: See also ch. HFS 50, Wis. adm. code.

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48.977 Appointment of guardians for certain children in need of protection or services. (2) TYPE OF GUARDIANSHIP. This section may be used for the appointment of a guardian of the person for a child if the court finds all of the following:

(a) That the child has been adjudged to be in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11), or (11m) or 938.13 (4) and been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 or that the child has been so adjudged and placement of the child in the home of a guardian under this section has been recommended under s. 48.33 (1) or 938.33 (1).

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended under par. (a) and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of 18 years.

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.

(d) That it is not in the best interests of the child that a petition to terminate parental rights be filed with respect to the child.

(e) That the child's parent is neglecting, refusing or unable to carry out the duties of a guardian or, if the child has 2 parents, both parents are neglecting, refusing or unable to carry out the duties of a guardian.

(f) That the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's health and safety are the paramount concerns, but that reunification of the child with the child's parent or parents is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's health and safety, but that continued placement of the child in the home would be contrary to the welfare of the child, except that the court is not required to find that the agency has made those reasonable efforts with respect to a parent of the child if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent. The court shall make the findings specified in this paragraph on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those

findings are based in the guardianship order. A guardianship order that merely references this paragraph without documenting or referencing that specific information in the order or an amended guardianship order that retroactively corrects an earlier guardianship order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(g) Any party seeking to effect a guardianship of an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(3) DESIGNATION AS A PERMANENT PLACEMENT. If a court appoints a guardian for a child under sub. (2), the court may designate the child's placement with that guardian as the child's permanent foster placement, but only for purposes of s. 48.368 (2) or 938.368 (2).

(3r) SUBSIDIZED GUARDIANSHIP. Subject to s. 48.62 (5) (d), if a county department or, in a county having a population of 500,000 or more, the department has determined under s. 48.62 (5) (a) 2. that appointing a guardian under sub. (2) for a child who does not meet the conditions specified under s. 48.62 (5) (a) 1. and providing monthly subsidized guardianship payments to the guardian are in the best interests of the child, the petitioner under sub. (4) (a) shall include in the petition under sub. (4) (b) a statement of that determination and a request for the court to include in the court's findings under sub. (4) (d) a finding confirming that determination. If the court confirms that determination and appoints a guardian for the child under sub. (2), the county department or department shall provide monthly subsidized guardianship payments to the guardian under s. 48.62 (5).

(4) PROCEDURE AND DISPOSITION. (a) *Who may file petition.* Any of the following persons may file a petition for the appointment of a guardian for a child under sub. (2):

1. The child or the child's guardian or legal custodian.
2. The child's guardian ad litem.
3. The child's parent.
4. The person with whom the child is placed or in whose home placement of the child is recommended as described in sub. (2) (a), if the person is nominated as the guardian of the child in the petition.
5. The department.
6. A county department under s. 46.22 or 46.23 or, if the child has been placed pursuant to an order under ch. 938 or the child's placement with the guardian is recommended under ch. 938, a county department under s. 46.215, 46.22, or 46.23.
7. A licensed child welfare agency that has been assigned primary responsibility for providing services to the child under a court order.

8. The person representing the interests of the public under s. 48.09.

(b) *Contents of petition.* A proceeding for the appointment of a guardian for a child under sub. (2) shall be initiated by a petition which shall be entitled "In the interest of (child's name), a person under the age of 18" and shall set forth all of the following with specificity:

1. The name, birth date and address of the child.
2. The names and addresses of the child's parent or parents, guardian and legal custodian.
3. The date on which the child was adjudged in need of protection or services under s. 48.13 (1), (2), (3), (3m), (4), (5), (8), (9), (10), (10m), (11), or (11m) or 938.13 (4) and the dates on which the child has been placed, or continued in a placement, outside of his or her home pursuant to one or more court orders under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 or, if the child has been so adjudged, but not so placed, the date of the report under s. 48.33 (1) or 938.33 (1) in which placement of the child in the home of the person is recommended.

4. A statement of the facts and circumstances which the petition alleges establish that the conditions specified in sub. (2) (b) to (f) are met.

5. A statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.

6. A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(c) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (cm) to be served upon all of the following persons:

- a. The child if the child is 12 years of age or older.
- b. The child's guardian and legal custodian.
- c. The child's guardian ad litem.
- d. The child's counsel.
- e. The child's parent.
- f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.
- g. The person with whom the child is placed or in whose home placement of the child is recommended as described in sub. (2) (a), if the person is nominated as the guardian of the child in the petition.
- h. The person representing the interests of the public under s. 48.09.
- i. The agency primarily responsible for providing services to the child under a court order.

j. If the court knows or has reason to know that an Indian child is the subject of the guardianship petition, the party

seeking the guardianship of the child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, the notice shall be provided to the secretary of the United States department of the interior in like manner, who shall have 15 days after receipt to provide the notice to the parent or Indian custodian and the tribe. No guardianship proceeding shall be held until at least 10 days after receipt of notice by the parent or Indian custodian and the tribe or the secretary of the United States department of the interior. The parent, Indian custodian, or tribe shall, upon request, be granted up to 20 additional days to prepare for such proceeding.

2. Service shall be made by 1st class mail at least 7 days before the hearing or by personal service at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or personal service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party.

(cm) *Plea hearing.* 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date which allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition. Before accepting a plea of no contest to the allegations in the petition, the court shall do all of the following:

a. Address the parties present and determine that the plea is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential disposition and the nature of the legal consequences of that disposition.

b. Establish whether any promises or threats were made to elicit the plea of no contest and alert all unrepresented parties to the possibility that an attorney may discover grounds to contest the petition that would not be apparent to those parties.

c. Make inquiries to establish to the satisfaction of the court that there is a factual basis for the plea of no contest.

2. If the petition is not contested and if the court accepts the plea of no contest, the court may immediately proceed to a dispositional hearing under par. (fm), unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable

time for the parties to prepare but is no more than 30 days after the plea hearing.

3. If the petition is contested or if the court does not accept the plea of no contest, the court shall set a date for a fact-finding hearing under par. (d) which allows reasonable time for the parties to prepare but is not more than 30 days after the plea hearing.

4. Each party to a guardianship proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based. ~~(d) *Fact-finding hearing.*~~ The court shall hold a fact-finding hearing on the petition on the date set by the court under par. (cm) 3., at which any party may present evidence relevant to the issue of whether the conditions specified in sub. (2) (a) to (f) have been met. If the court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions specified in sub. (2) (a) to (f) have been met, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested. If a party requests an adjournment, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 30 days after the fact-finding hearing.

(e) *Court report.* For a child who has been placed, or continued in a placement, outside of his or her home for 6 months or longer, the court shall order the person or agency primarily responsible for providing services to the child under a court order to file with the court a report containing the written summary under s. 48.38 (5) (e) and as much information relating to the appointment of a guardian as is reasonably ascertainable. For a child who has been placed, or continued in a placement, outside of his or her home for less than 6 months, the court shall order the person or agency primarily responsible for providing services to the child under a court order to file with the court the report submitted under s. 48.33 (1) or 938.33 (1), the permanency plan prepared under s. 48.38 or 938.38, if one has been prepared, and as much information relating to the appointment of a guardian as is reasonably ascertainable. The agency shall file the report at least 48 hours before the date of the dispositional hearing under par. (fm).

(fm) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified or set by the court under par. (cm) 2. or (d), at which any party may present evidence, including expert testimony, relevant to the disposition.

(g) *Dispositional factors.* In determining the appropriate disposition under this section, the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court

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shall consider any report submitted under par. (e) and shall consider, but not be limited to, all of the following:

1. Whether the person would be a suitable guardian of the child.
2. The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child attains the age of 18 years.
3. The wishes of the child.

(h) *Disposition.* After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the person as the child's guardian is not in the best interests of the child.

2. A disposition ordering that the person with whom the child has been placed or in whose home placement of the child is recommended as described in sub. (2) (a) be appointed as the child's guardian under sub. (5) (a) or limited guardian under sub. (5) (b), if the court determines that such an appointment is in the best interests of the child.

3. If the child is an Indian child, the court shall place the child in the least restrictive setting which most approximates a family and in which the child's special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. The disposition shall give preference, in the absence of good cause to the contrary, to the following in the order of preference:

- a. A member of the Indian child's extended family.
- b. A home licensed or approved by the Indian child's tribe.
- c. A home licensed by an authorized non-Indian licensing agency.
- d. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.
- e. If the Indian child's tribe has established a different order of preference by resolution, the court shall follow that order as long as the placement is the least restrictive setting appropriate to the particular needs of the child
- f. If subd. e. applies, the court shall consider the preference of the Indian child and his or her parent.

(i) *Effect of disposition on permanency plan review process.* After a disposition under par. (h), the child's permanency plan shall continue to be reviewed under s. 48.38 (5), if applicable.

(5) DUTIES AND AUTHORITY OF GUARDIAN. (a) *Full guardianship.* Unless limited under par. (b), a guardian appointed under sub. (2) shall have all of the duties and authority specified in s. 48.023.

(b) *Limited guardianship.* The court may order that the duties and authority of a guardian appointed under sub. (2) be limited. The duties and authority of a limited guardian shall be as specified by the order of appointment under sub. (4) (h) 2. or any revised order under sub. (6). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited guardian appointed under sub. (2) to the extent those provisions are relevant to the duties or authority of the limited guardian, except as limited by the order of appointment.

(6) REVISION OF GUARDIANSHIP ORDER. (a) Any person authorized to file a petition under sub. (4) (a) may request a revision in a guardianship order entered under this subsection or sub. (4) (h) 2., or the court may, on its own motion, propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the court's disposition.

(b) The court shall hold a hearing on the matter prior to any revision of the guardianship order if the request or court proposal indicates that new information is available which affects the advisability of the court's guardianship order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

(c) If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or proposal shall be attached to the notice. The court may order a revision if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances and if the court determines that a revision would be in the best interests of the child.

(7) TERMINATION OF GUARDIANSHIP. (a) *Term of guardianship.* Unless the court order entered under sub. (4) (h) 2. or (6) specifies that a guardianship under this section be for a lesser period of time, a guardianship under this section shall continue until the child attains the age of 18 years or until terminated by the court, whichever occurs earlier.

(b) *Removal for cause.* 1. Any person authorized to file a petition under sub. (4) (a) may request that a guardian appointed under sub. (2) be removed for cause or the court may, on its own motion, propose such a removal. The request or court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and may allege facts

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relating to any other information that affects the advisability of the court's disposition.

2. The court shall hold a hearing on the matter unless written waivers of objections to the removal are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request or court proposal shall be attached to the notice. The court shall remove the guardian for cause if, at the hearing, the court finds that it has been proved by clear and convincing evidence that the guardian is or has been neglecting, is or has been refusing or is or has been unable to discharge the guardian's trust and if the court determines that removal of the guardian would be in the best interests of the child.

(c) *Resignation.* A guardian appointed under sub. (2) may resign at any time if the resignation is accepted by the court.

(d) *Termination on request of parent.* 1. A parent of the child may request that a guardianship order entered under sub. (4) (h) 2. or a revised order entered under sub. (6) be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child.

2. The court shall hold a hearing on the matter unless written waivers of objections to the termination are signed by all parties entitled to receive notice under sub. (4) (c) and the court approves the waivers.

3. If a hearing is to be held, the court shall notify the persons entitled to receive notice under sub. (4) (c) at least 7 days prior to the hearing of the date, place and purpose of the hearing. A copy of the request shall be attached to the notice. The court shall terminate the guardianship if, at the hearing, the court finds that it has been proved by clear and convincing evidence that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and the parent is willing and able to carry out the duties of a guardian and if the court determines that termination of the guardianship would be in the best interests of the child.

(e) *Termination on termination of parental rights.* If a court enters an order under s. 48.427 (3p) or 48.428 (2) (b), the court shall terminate the guardianship under this section.

(8) **RELATIONSHIP TO CH. 880.** (a) This section does not abridge the duties or authority of a guardian appointed under ch. 880.

(b) Nothing in this section prohibits an individual from petitioning a court under ch. 880 for appointment of a guardian.

History: 1995 a. 275; 1997 a. 27, 35, 80, 237; 1999 a. 133; 2001 a. 2, 109; 2005 a. 25.

48.978 Appointment or designation of standby guardian of a child. (1) DEFINITIONS. In this section:

(a) "Attending physician" means a physician licensed under ch. 448 who has primary responsibility for the treatment and care of a parent who has filed a petition under sub. (2) (a) or made a written designation under sub. (3) (a) or, if more than one physician has responsibility for the treatment and care of that parent, if a physician is acting on behalf of a physician who has primary responsibility for the treatment and care of that parent or if no physician is responsible for the treatment and care of that parent, "attending physician" means any physician licensed under ch. 448 who is familiar with the medical condition of that parent.

(b) "Debilitation" means a person's chronic and substantial inability, as a result of a physical illness, disease, impairment or injury, to care for his or her child.

(c) "Incapacity" means a person's chronic and substantial inability, as a result of a mental impairment, to care for his or her child.

(2) **JUDICIAL APPOINTMENT.** (a) *Who may file petition.* 1. A parent of a child may file a petition for the judicial appointment of a standby guardian of the person or estate or both of the child under this subsection. A parent may include in the petition the nomination of an alternate standby guardian for the court to appoint if the person nominated as standby guardian is unwilling or unable to serve as the child's guardian or if the court determines that appointment of the person nominated as standby guardian as the child's guardian is not in the best interests of the child. Subject to subds. 2. and 3., if a petition is filed under this subdivision, the petition shall be joined by each parent of the child.

2. If a parent of a child cannot with reasonable diligence locate the other parent of the child, the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that reasonable diligence, the court may grant the petition.

3. If a parent of a child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, the parent may file a petition under subd. 1. without the other parent joining in the petition and, if the parent filing the petition submits proof satisfactory to the court of that refusal, unwillingness or inability, the court may grant the petition.

Unofficial text from 03-04 Wis. Stats. database. See printed 03-04 Statutes and 2005 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, <http://www.legis.state.wi.us/rsb/>

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(b) *Contents of petition.* A proceeding for the appointment of a standby guardian for a child under this subsection shall be initiated by a petition that shall be entitled "In the interest of (child's name), a person under the age of 18" and shall set forth with specificity all of the following:

1. The name, birth date and address of the child.
2. The names and addresses of the child's parent or parents, guardian and legal custodian.
3. The name and address of the person nominated as standby guardian and, if the petitioner is nominating an alternate standby guardian, the name and address of the person nominated as alternate standby guardian.
4. The duties and authority that the petitioner wishes the standby guardian to exercise.
5. A statement of whether the duty and authority of the standby guardian are to become effective on the petitioner's incapacity, on the petitioner's death, or on the petitioner's debilitation and consent to the beginning of the duty and authority of the standby guardian, or on whichever occurs first.
6. A statement that there is a significant risk that the petitioner will become incapacitated or debilitated or die, as applicable, within 2 years after the date on which the petition is filed and the factual basis for that statement.
7. If a parent of the child cannot with reasonable diligence locate the other parent of the child, a statement that the child has no parent, other than the petitioner, who is willing and able to exercise the duties and authority of guardianship and who, with reasonable diligence, can be located and a statement of the efforts made to locate the other parent.
8. If a parent of the child can locate the other parent of the child, but that other parent refuses to join in the petition or indicates that he or she is unwilling or unable to exercise the duty and authority of guardianship, a statement that the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship and a statement that the nonpetitioning parent has refused to join in the petition or has indicated that he or she is unwilling or unable to exercise the duty and authority of guardianship.
9. A description of the child's income and assets, if any.
10. A statement of whether the proceedings are subject to the uniform child custody jurisdiction act under ch. 822.
11. A statement of whether the child may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963.

(c) *Service of petition and notice.* 1. The petitioner shall cause the petition and notice of the time and place of the hearing under par. (d) to be served on all of the following persons:

- a. The child if the child is 12 years of age or older.
- b. The child's guardian and legal custodian.

c. The child's guardian ad litem.

d. The child's counsel.

e. The child's other parent, if that parent has not joined in the petition and if that parent can with reasonable diligence be located.

f. The persons to whom notice is required to be given under s. 48.27 (3) (b) 1.

g. The person who is nominated as the standby guardian of the child in the petition and, if an alternate standby guardian is nominated in the petition, the person who is nominated as the alternate standby guardian.

2. Service shall be made by certified mail at least 7 days before the hearing or by personal service in the same manner as a summons is served under s. 801.11 (1) (a) or (b) at least 7 days before the hearing or, if with reasonable diligence a party specified in subd. 1. cannot be served by mail or by personal or substituted service, service shall be made by publication of a notice published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party.

(d) *Plea hearing.* 1. A hearing to determine whether any party wishes to contest a petition filed under par. (a) shall take place on a date that allows reasonable time for the parties to prepare but is no more than 30 days after the filing of the petition. At the hearing, the nonpetitioning parties and the child, if he or she is 12 years of age or over or is otherwise competent to do so, shall state whether they wish to contest the petition.

2. If the petition is not contested, the court may immediately proceed to a dispositional hearing under par. (g), unless an adjournment is requested under par. (g).

3. If the petition is contested, the court shall set a date for a fact-finding hearing under par. (e) that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing.

(e) *Fact-finding hearing.* The court shall hold a fact-finding hearing on the petition on the date set by the court under par. (d) 3. at which any party may present evidence relevant to any of the following issues:

1. Whether there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. Whether the child has any parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. If a parent cannot be located, whether the petitioner has made diligent efforts to locate that parent.

Unofficial text from 03-04 Wis. Stats. database. See printed 03-04 Statutes and 2005 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 264-6978, <http://www.legis.state.wi.us/rsb/>

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4. If a parent has refused to join in the petition, whether that refusal is unreasonable.

(f) *Required findings by court.* If the court, at the conclusion of the fact-finding hearing, makes all of the following findings by clear and convincing evidence, the court shall immediately proceed to a dispositional hearing unless an adjournment is requested under par. (g):

1. That there is a significant risk that the petitioner will become incapacitated or debilitated or die within 2 years after the date on which the petition was filed.

2. That the child has no parent, other than the petitioner, who is willing and able to exercise the duty and authority of guardianship.

3. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent.

4. That, if a parent has refused to join in the petition, the refusal was unreasonable.

5. That the person nominated as standby guardian is willing and able to act as standby guardian or, if that person is not so willing and able, that the person nominated as alternate standby guardian is willing and able to act as standby guardian.

(g) *Dispositional hearing.* The court shall hold a dispositional hearing on the petition at the time specified under par. (d) 2. or (e), at which any party may present evidence, including expert testimony, relevant to the disposition. If at the plea hearing or the fact-finding hearing a party requests an adjournment of the dispositional hearing, the court shall set a date for the dispositional hearing that allows reasonable time for the parties to prepare but is no more than 30 days after the plea hearing or fact-finding hearing.

(h) *Dispositional factors.* In determining the appropriate disposition under this par. (j), the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:

1. Whether the person nominated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person nominated as standby guardian or alternate standby guardian to serve as the child's guardian if the petitioner becomes incapacitated or debilitated or dies.

3. The wishes of the child.

(i) *Appearance by petitioner.* If the petitioner is medically unable to appear at a hearing under par. (d), (e) or (g), the court may dispense with the petitioner's appearance, except on the motion of a party and for good cause shown.

(j) *Disposition.* After receiving any evidence relating to the disposition, the court shall enter one of the following dispositions within 10 days after the dispositional hearing:

1. A disposition dismissing the petition if the court determines that appointment of the person nominated as standby guardian or alternate standby guardian as the child's standby guardian is not in the best interests of the child.

2. A disposition ordering that the person nominated as standby guardian or alternate standby guardian be appointed as the child's standby guardian if the court determines that such an appointment is in the best interests of the child.

(k) *Guardianship order.* A standby guardianship order under par. (j) 2. shall include all of the following:

1. A statement of whether the standby guardianship is a full guardianship under sub. (6) (b) 1. or a limited guardianship under sub. (6) (b) 2.

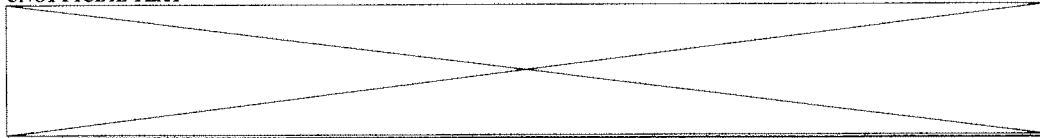
2. A statement of when the standby guardianship goes into effect, which may be on receipt by the standby guardian of a determination of the petitioner's incapacity, a certificate of the petitioner's death, or a determination of the petitioner's debilitation and the petitioner's written consent under par. (L) 3. that the standby guardianship go into effect.

(L) *Commencement of duty and authority of court-appointed standby guardian.* 1. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of the certificate of the petitioner's death.

3. If a standby guardianship order under par. (j) 2. provides that the duty and authority of a standby guardian are effective on the petitioner's debilitation and consent to the standby guardianship going into effect, the duty and authority of a standby guardian shall begin on the receipt by the standby guardian of a determination of debilitation under sub. (4) and a written consent to the beginning of that duty and authority signed by the petitioner in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If the petitioner is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the petitioner and at the direction of the petitioner, in the presence of the petitioner and 2 witnesses

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18 years of age or over, neither of whom may be the standby guardian.

4. The standby guardian shall file the determination of incapacity received under subd. 1., the certificate of death received under subd. 2., or the determination of debilitation and written consent received under subd. 3., whichever is applicable, with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination, certificate, or determination and written consent. If the standby guardian fails to file that determination, certificate, or determination and written consent with that court within those 90 days, the court may rescind the guardianship order.

(m) *Suspension of duty and authority of court-appointed standby guardian.* 1. The duty and authority of a standby guardian appointed under par. (j) 2. shall be suspended on the receipt by the standby guardian of a copy of a determination of recovery or remission under sub. (5).

2. The standby guardian shall file the determination of recovery or remission received under subd. 1. with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

3. The duty and authority of a standby guardian that are suspended under subd. 1. shall begin again as provided in par. (L).

(n) *Rescission of standby guardianship.* 1. If at any time before the duty and authority of a standby guardian appointed under par. (j) 2. begin, the court finds that the findings of the court under par. (f) no longer apply or determines that the determination of the court under par. (j) 2. no longer applies, the court may rescind the guardianship order.

2. A person who is appointed as a standby guardian under par. (j) 2. may, at any time before his or her duty and authority as a standby guardian begin, renounce that appointment by executing a written renunciation, filing the renunciation with the court that issued the guardianship order and notifying the petitioner in writing of the renunciation. On compliance with this subdivision, the court shall rescind the guardianship order.

3. A person who is appointed as a standby guardian under par. (j) 2. may, at any time after his or her duty and authority as standby guardian begin, resign that appointment by executing a written resignation, filing the resignation with the court that issued the guardianship order and notifying the petitioner, if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind

the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

4. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time before the duty and authority of the standby guardian begin by executing a written revocation, filing the revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court shall rescind the guardianship order.

5. The petitioner may revoke a standby guardianship ordered under par. (j) 2. at any time after the duty and authority of the standby guardian begin by executing a written revocation, filing the written revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

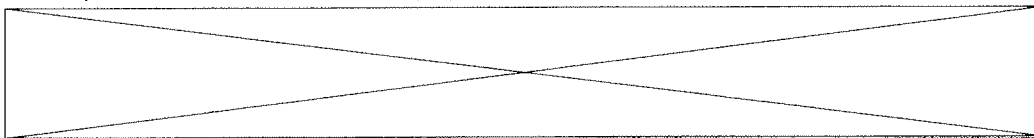
(3) **PARENTAL DESIGNATION.** (a) *Written designation.* A parent may designate a standby guardian for his or her child by means of a written designation signed by the parent in the presence of 2 witnesses 18 years of age or over, neither of whom may be the standby guardian, and by the standby guardian. If a parent is physically unable to sign that written designation, another person 18 years of age or over who is not the standby guardian may sign the written designation on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses 18 years of age or over, neither of whom may be the standby guardian.

(b) *Contents of written designation; form.* 1. A written designation of a standby guardian shall identify the parent who is making the designation, the child who is the subject of the standby guardianship and the person who is designated to be the standby guardian. The written designation shall also state the duties and authority that the parent wishes the standby guardian to exercise and shall indicate that the parent intends for the duty and authority of standby guardian to begin on the parent's incapacity, death, or debilitation and consent under par. (c) 3. to the beginning of the duty and authority of the standby guardian, or on whichever occurs first. A parent may designate an alternate standby guardian in the same written designation and in the same manner as the parent designates the standby guardian.

2. A written designation of a standby guardian complies with this subsection if the written designation substantially conforms to the following form:

DESIGNATION OF STANDBY GUARDIAN

I, (name and address of parent), being of sound mind, do hereby designate (name and address of standby guardian) as



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standby guardian of the person and estate of my child(ren)
(name(s), birth date(s) and address(es) of child(ren)).

Address
Signature

(You may, if you wish, provide that the duty and authority of the standby guardian shall extend only to the person, or only to the estate, of your child(ren), by crossing out "person and" or "and estate", whichever is inapplicable, above.)

The duty and authority of the standby guardian shall begin on one of the following events, whichever occurs first:

1. I die.
2. My doctor determines that I am mentally incapacitated, and thus unable to care for my child(ren).
3. My doctor determines that I am physically debilitated, and thus unable to care for my child(ren), and I consent in writing, before 2 witnesses, to the standby guardian's duty and authority taking effect.

If the person I designate above is unwilling or unable to act as standby guardian for my child(ren), I hereby designate (name and address of alternate standby guardian) as standby guardian for my child(ren).

I also understand that the duty and authority of the standby guardian designated above will end 180 days after the day on which that duty and authority begin if the standby guardian does not petition the court within those 180 days for an order appointing him or her as standby guardian.

I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship, that I may revoke the standby guardianship at any time before the standby guardianship begins, that I may revoke the standby guardianship at any time after the standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on my recovery or remission from my incapacity or debilitation.

Signature

Date

STATEMENT OF WITNESSES

I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No. 1:
(print) Name ...
Address
Signature

Date

Witness No. 2:
(print) Name

Date

STATEMENT OF WITNESSES

STATEMENT OF STANDBY GUARDIAN
AND ALTERNATE STANDBY GUARDIAN

I (name and address of standby guardian), and I, (name and address of alternate standby guardian), understand that (name of parent) has designated me to be the standby guardian or alternate standby guardian of the person and estate (cross out "person and" or "and estate", if inapplicable) of his or her child(ren) if he or she dies, becomes mentally incapacitated, or becomes physically debilitated and consents, to my duty and authority taking effect. I hereby declare that I am willing and able to undertake the duty and authority of standby guardianship and I understand that within 180 days after that duty and authority begin I must petition the court for an order appointing me as standby guardian. I further understand that (name of parent) retains full parental rights over his or her child(ren) even after the beginning of the standby guardianship, that he or she may revoke the standby guardianship at any time before the standby guardianship begins, that he or she may revoke the standby guardianship at any time after the standby guardianship begins, subject to the approval of the court, and that the standby guardianship will be suspended on his or her recovery or remission from his or her incapacity or debilitation.

Standby guardian's signature

Date

Address

Alternate standby guardian's signature

Date

Address

3. A written designation of a standby guardian may also contain a consent to that designation that substantially conforms to the following form and that shall be completed if the child's other parent can be located:

CONSENT TO DESIGNATION OF STANDBY GUARDIAN

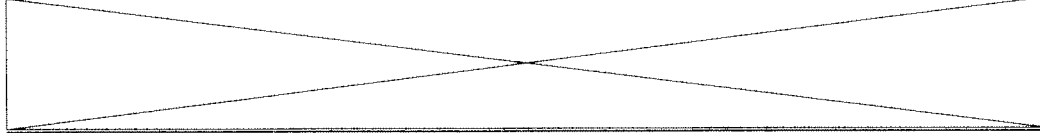
I, (name and address of other parent), being of sound mind, do hereby consent to the designation by (name of designating parent) of (name of standby guardian) as standby guardian, and of (name of alternate standby guardian) as alternate standby guardian, of the person and estate (cross out "person and" or "and estate", if inapplicable) of my child(ren) (name(s), birth date(s) and address(es) of child(ren)).

I also consent to the terms and conditions of the standby guardianship stated above and I understand that I retain full parental rights over my child(ren) even after the beginning of the standby guardianship and that I may revoke my consent to the standby guardianship at any time.

Signature

Date

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I declare that the person whose name appears above signed this document in my presence, or was physically unable to sign the document and asked another person 18 years of age or over to sign the document, who did so in my presence, and that I believe the person whose name appears above to be of sound mind. I further declare that I am 18 years of age or over and that I am not the person designated as standby guardian or alternate standby guardian.

Witness No. 1:

(print) Name

Date

Address

Signature

Witness No. 2:

(print) Name

Date

Address

Signature

(c) *Commencement of duty and authority of designated standby guardian.* 1. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's incapacity, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of incapacity under sub. (4).

2. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent's death, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a certificate of the parent's death.

3. If a written designation under par. (a) indicates that the parent intends for the duty and authority of the standby guardian to begin on the parent becoming debilitated and consenting to the beginning of the standby guardianship, the duty and authority of the standby guardian shall begin on the receipt by the standby guardian of a copy of a determination of debilitation under sub. (4) and a copy of the parent's written consent to the beginning of that duty and authority signed by the parent in the presence of 2 witnesses, neither of whom may be the standby guardian, and by the standby guardian. If the parent is physically unable to sign that written consent, another person 18 years of age or over who is not the standby guardian may sign the written consent on behalf of the parent and at the direction of the parent, in the presence of the parent and 2 witnesses, neither of whom may be the standby guardian.

4. Subject to par. (d) 2., the standby guardian shall file a petition under par. (e) for judicial appointment as standby guardian of the child within 180 days after the date on which the standby guardianship begins. If the standby guardian fails to file that petition within those 180 days, the standby

guardian's duty and authority shall end 180 days after the date on which the standby guardianship began. If the standby guardian files the petition after the expiration of those 180 days, the duty and authority of the standby guardian shall begin again on the date on which the petition is filed.

(d) *Suspension of duty and authority of designated standby guardian.* 1. The duty and authority of a standby guardian designated under par. (a) shall be suspended on the receipt by the standby guardian of a copy of a determination of recovery or remission under sub. (5).

2. If the standby guardian receives a determination of recovery or remission under subd. 1. before the standby guardian files the petition under par. (e), the standby guardian need not file the petition under par. (e).

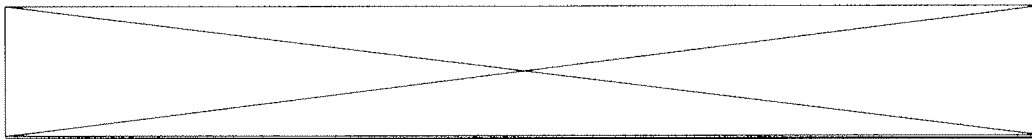
3. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian files the petition under par. (e), but before the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court with which the petition is filed by the time of the next hearing on the petition or within 7 days after the date on which the standby guardian receives that determination, whichever is sooner. On compliance with this subdivision, the court shall dismiss the petition. If the standby guardian fails to file that determination with that court within those 7 days, the court may rescind the guardianship.

4. If the standby guardian receives a determination of recovery or remission under subd. 1. after the standby guardian is judicially appointed under par. (g), the standby guardian shall file that determination with the court that entered the guardianship order within 90 days after the date on which the standby guardian receives that determination. If the standby guardian fails to file that determination with that court within those 90 days, the court may rescind the guardianship order.

5. The duty and authority of a standby guardian that are suspended under subd. 1. shall begin again as provided in par. (c).

(e) *Petition for judicial appointment.* A petition for judicial appointment as standby guardian of a child under this subsection shall be in the same form as a petition under sub. (2) (b) and shall set forth with specificity the information specified in sub. (2) (b) 1. to 4. and 7. to 11. The petition shall also contain a statement that the parent has become incapacitated, has died, or has become debilitated and has consented to the beginning of the duty and authority of the standby guardian. In addition, the petition shall be accompanied by the following documentation:

1. The written designation under par. (a) signed or consented to by each parent of the child or, if a parent cannot with reasonable diligence be located or has refused to consent to



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the designation, the written designation under par. (a) signed by one parent and a statement of the efforts made to find the other parent or of the fact that the other parent has refused to consent to the designation.

2. A copy of the determination of incapacity received under par. (c) 1., the certificate of death received under par. (c) 2. or the determination of debilitation and written consent received under par. (c) 3.

3. If the petition is filed by a person who has been designated as an alternate standby guardian, a statement that the person designated as standby guardian is unwilling or unable to act as standby guardian and the factual basis for that statement.

(f) *Procedure for judicial appointment.* 1. The petitioner shall cause the petition and notice of the time and place of the plea hearing under subd. 2. to be served on all of the persons specified in sub. (2) (c) 1. a. to f. and on the parent who has made the written designation under par. (a), if living. Service shall be made in the manner provided in sub. (2) (c) 2.

2. The court shall hold a plea hearing, a fact-finding hearing and a dispositional hearing in the manner provided in sub. (2) (d) to (g) and shall enter a dispositional order as provided in sub. (2) (j) and (k) 1., except that at the fact-finding hearing any party may present evidence relevant to the issues specified in par. (g), and at the conclusion of that hearing the court shall immediately proceed to a dispositional hearing, unless an adjournment is requested, if the court finds by clear and convincing evidence that the conditions specified in par. (g) have been met.

(g) *Required findings by court.* The court shall appoint a person to be a standby guardian under this subsection if, after making the following findings by clear and convincing evidence, the court determines that the appointment is in the best interests of the child:

1. That the person was designated as standby guardian in accordance with pars. (a) and (b).

2. That the standby guardian has received a determination of incapacity, a death certificate, or a determination of debilitation and written consent, as provided in par. (c) 1., 2. or 3., whichever is applicable.

3. That the child has no parent who is willing and able to exercise the duty and authority of guardianship.

4. That, if a parent cannot be located, the petitioner has made diligent efforts to locate that parent or, if a parent has refused to consent to the designation of the standby guardian, the consent was unreasonably withheld.

5. That, if the petitioner is a person designated as an alternate standby guardian, the person designated as standby guardian is unwilling or unable to act as standby guardian.

(h) *Dispositional factors.* In determining the appropriate disposition under par. (g), the best interests of the child shall be the prevailing factor to be considered by the court. In making a decision about the appropriate disposition, the court shall consider all of the following:

1. Whether the person designated as standby guardian or alternate standby guardian would be a suitable guardian of the child.

2. The willingness and ability of the person designated as standby guardian or alternate standby guardian to serve as the child's guardian.

3. The wishes of the child.

(i) *Appearance by parent.* If the parent who has made a written designation under par. (a) is medically unable to appear at a hearing specified in par. (f) 2., the court may dispense with the parent's appearance, except on the motion of a party and for good cause shown.

(j) *Revocation by parent.* 1. A parent who has made a written designation under par. (a) may, at any time before the filing of a petition under par. (e), revoke a standby guardianship created under this subsection by executing a written revocation and notifying the standby guardian in writing of the revocation, making a subsequent written designation under par. (a) or verbally revoking the standby guardianship in the presence of 2 witnesses.

2. After a petition under par. (e) has been filed but before the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court with which the petition has been filed and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may dismiss the petition and rescind the guardianship if the court determines that dismissal of the petition and rescission of the guardianship are in the best interests of the child.

3. After the standby guardian has been judicially appointed under par. (g), a parent who has made a written designation under par. (a) may revoke a standby guardianship created under this subsection by executing a written revocation, filing the revocation with the court that entered the guardianship order and notifying the standby guardian in writing of the revocation. On compliance with this subdivision, the court may rescind the guardianship order if the court determines that rescission of the guardianship order is in the best interests of the child.

(k) *Renunciation of designation.* 1. A person whom a parent has designated as a standby guardian under par. (a) may, at any time before the filing of a petition under par. (e), renounce that designation by executing a written renunciation

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and notifying the parent, if living, in writing of that renunciation.

2. After a petition under par. (e) has been filed, but before the standby guardian has been judicially appointed under par. (g), a person whom a parent has designated as a standby guardian under par. (a) may renounce that designation by executing a written renunciation, filing the renunciation with the court with which the petition has been filed and notifying the parent, if living, in writing of that renunciation. On compliance with this subdivision, the court may accept the renunciation and rescind the guardianship order if the court finds that the renunciation and rescission are in the best interests of the child.

3. A person who has been judicially appointed as a standby guardian under par. (g) may, at any time after that appointment, resign that appointment by executing a written resignation, filing the resignation with the court that entered the guardianship order and notifying the parent who designated the person as a standby guardian under par. (a), if living, in writing of that resignation. On compliance with this subdivision, the court may accept the resignation and rescind the guardianship order if the court determines that the resignation and rescission are in the best interests of the child.

(4) DETERMINATION OF INCAPACITY OR DEBILITATION. (a) *In general.* 1. A determination of incapacity or debilitation under this section shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the cause and nature of the parent's incapacity or debilitation and the extent and probable duration of the incapacity or debilitation.

2. If a standby guardian's identity is known to an attending physician making a determination of incapacity or debilitation, the attending physician shall provide a copy of the determination of incapacity or debilitation to the standby guardian.

(b) *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's incapacity or debilitation for purposes of this section.

(c) *Information to be provided to parent.* On receipt of a determination of a parent's incapacity, a standby guardian shall inform the parent of all of the following, if the parent is able to comprehend that information:

1. That a determination of incapacity has been made and, as a result, the duty and authority of the standby guardian have begun.

2. That the parent may revoke the standby guardianship in accordance with sub. (2) (n) 5. or (3) (j) 1., 2. or 3., whichever is applicable.

(5) DETERMINATION OF RECOVERY OR REMISSION. (a) *In general.* 1. A determination that a parent has recovered or is in remission from his or her incapacity or debilitation shall be in writing, shall be made to a reasonable degree of medical certainty by an attending physician and shall contain the opinion of the attending physician regarding the extent and probable duration of the recovery or remission.

2. If a standby guardian's identity is known to an attending physician making a determination of recovery or remission, the attending physician shall provide a copy of the determination of recovery or remission to the standby guardian.

(b) *On request of standby guardian.* If requested by a standby guardian, an attending physician shall make a determination regarding a parent's recovery or remission for purposes of this section.

(6) PARENTAL RIGHTS; DUTY AND AUTHORITY OF STANDBY GUARDIAN. (a) *Parental rights.* The beginning of the duty and authority of a standby guardian under sub. (2) or (3) does not, in itself, divest a parent of any parental rights.

(b) *Duties and authority of guardian.* 1. Unless limited under subd. 2., a standby guardian appointed under sub. (2) or designated under sub. (3) shall have all of the duties and authority specified in s. 48.023.

2. The court may order or a parent may provide that the duties and authority of a standby guardian appointed under sub. (2) or designated under sub. (3) be limited. The duties and authority of a limited standby guardian shall be as specified by the order of appointment under sub. (2) (j) 2. or the written designation under sub. (3) (a). All provisions of the statutes concerning the duties and authority of a guardian shall apply to a limited standby guardian appointed under sub. (2) or designated under sub. (3) to the extent those provisions are relevant to the duties or authority of the limited standby guardian, except as limited by the order of appointment or written designation.

(7) RELATIONSHIP TO CH. 880. (a) Except when a different right, remedy or procedure is provided under this section, the rights, remedies and procedures provided in ch. 880 shall govern a standby guardianship created under this section.

(b) This section does not abridge the duties or authority of a guardian appointed under ch. 880.

(c) Nothing in this section prohibits an individual from petitioning a court for the appointment of a guardian under ch. 880.

History: 1997 a. 334.

SUBCHAPTER XX

MISCELLANEOUS PROVISIONS

48.98 Interstate placement of children. (1) No person may bring a child into this state or send a child out of this state for the purpose of placing the child in foster care or treatment foster care or for the purpose of adoption without a certificate from the department that the home is suitable for the child.

(2) (a) Any person, except a county department or licensed child welfare agency, who brings a child into this state for the purpose of placing the child in a foster home or treatment foster home shall, before the child's arrival in this state, file with the department a \$1,000 noncancelable bond in favor of this state, furnished by a surety company licensed to do business in this state. The condition of the bond shall be that the child will not become dependent on public funds for his or her primary support before the child reaches age 18 or is adopted.

(b) By filing the bond required under par. (a), the person filing the bond and the surety submit to the jurisdiction of the court in the county in which the person resides for purposes of liability on the bond, and appoint the clerk of the court as their agent upon whom any papers affecting their bond liability may be served.

(c) If upon affidavit of the department it appears to the court that the condition of the bond has been violated, the court shall order the person who filed the bond and the surety to show cause why judgment on the bond should not be entered for the department. If neither the person nor the surety appears for the hearing on the order to show cause, or if the court concludes after the hearing that the condition of the bond has been violated, the court shall enter judgment on the bond for the department against the person who filed the bond and the surety.

(d) The department shall periodically bill the person who filed the bond and the surety under s. 46.03 (18) (b) or 46.10 for the cost of care and maintenance of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian and surety shall also be liable under the bond for costs incurred by the department in enforcing the bond.

(e) The department may waive the bond requirement under par. (a).

(3) The person bringing or sending the child into or out of this state shall report to the department, at least once each year and at any other time required by the department, concerning the location and well-being of the child, until the child is 18 years of age or is adopted.

(4) (a) This section applies only to interstate placements of children which are not governed by s. 48.988.

(b) Section 48.839 governs the placement of children who are not U.S. citizens and not under agency guardianship who are brought into this state from a foreign jurisdiction for the purpose of adoption.

(5) The department may promulgate all rules necessary for the enforcement of this section.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1981 c. 81; 1985 a. 176; 1985 a. 332 s. 251 (5); 1993 a. 446.

48.981 Abused or neglected children and abused unborn children. (1) **DEFINITIONS.** In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(am) "Caregiver" means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, greatgrandparent, stepparent, brother, sister, stepbrother, stepsister, half brother, or half sister.

2. The child's guardian.

3. The child's legal custodian.

4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.

5. An employee of a residential facility or residential care center for children and youth in which the child was or is placed.

6. A person who provides or has provided care for the child in or outside of the child's home.

7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.

8. Any relative of the child other than a relative specified in subd. 1.

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the halfway house program under s. 301.0465, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile

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offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

NOTE: Par. (b) is amended eff. 7-1-08 by 2003 Wis. Act 33 to read:

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

(cs) "Indian child" means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.

2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.

2. As a person who is both eligible for membership in the tribe or band and the biological child of a member of the tribe or band.

(cv) "Member of a religious order" means an individual who has taken vows devoting himself or herself to religious or spiritual principles and who is authorized or appointed by his or her religious order or organization to provide spiritual or religious advice or service.

(cx) "Member of the clergy" has the meaning given in s. 765.002 (1) or means a member of a religious order, and includes brothers, ministers, monks, nuns, priests, rabbis, and sisters.

(d) "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical

or dental care or shelter so as to seriously endanger the physical health of the child.

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) "Relative" means a parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, stepgrandparent, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, stepuncle, or steppaunt.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) "Subject" means a person or unborn child named in a report or record as any of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect.

1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.

2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn child.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

(2) PERSONS REQUIRED TO REPORT. (a) Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3):

1. A physician.

2. A coroner.

3. A medical examiner.

4. A nurse.

5. A dentist.

6. A chiropractor.

7. An optometrist.

8. An acupuncturist.

9. A medical or mental health professional not otherwise specified in this paragraph.

10. A social worker.

11. A marriage and family therapist.

12. A professional counselor.

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13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d).

14. A school teacher.

15. A school administrator

16. A school counselor.

17. A mediator under s. 767.11.

18. A child-care worker in a day care center, group home, as described in s. 48.625 (1m), or residential care center for children and youth.

19. A day care provider.

20. An alcohol or other drug abuse counselor.

21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.

22. A physical therapist.

22m. A physical therapist assistant.

23. An occupational therapist.

24. A dietitian.

25. A speech-language pathologist.

26. An audiologist.

27. An emergency medical technician.

28. A first responder.

29. A police or law enforcement officer.

(b) A court-appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236 (3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(bm) 1. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause to suspect that a child seen by the member of the clergy in the course of his or her professional duties:

a. Has been abused, as defined in s. 48.02 (1) (b) to (f), or

b. Has been threatened with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse of the child will likely occur.

2. Except as provided in subd. 3. and sub. (2m), a member of the clergy shall report as provided in sub. (3) if the member of the clergy has reasonable cause, based on observations made or information that he or she receives, to suspect that a member of the clergy has done any of the following:

a. Abused a child, as defined in s. 48.02 (1) (b) to (f).

b. Threatened a child with abuse, as defined in s. 48.02 (1) (b) to (f), and abuse of the child will likely occur.

3. A member of the clergy is not required to report child abuse information under subd. 1. or 2. that he or she receives solely through confidential communications made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the disciplines, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

(c) Any person not otherwise specified in par. (a), (b), or (bm), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection may be discharged from employment for so doing.

(2m) EXCEPTION TO REPORTING REQUIREMENT. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, as defined in s. 253.07 (1) (b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily

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or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) REPORTS; INVESTIGATION. (a) *Referral of report.* 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all cases reported to it. The county department, department, or licensed child welfare agency may require that a subsequent report be made in writing.

3. A county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02 (1) (a), (am), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(b) *Duties of local law enforcement agencies.* 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20.

2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), that the sheriff or police department will routinely refer to the district attorney for criminal prosecution.

(bm) *Notice of report to Indian tribal agent.* In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho-Chunk tribe, if a county department which receives a report under par. (a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho-Chunk service area where the child or expectant mother resides.

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3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho-Chunk service area in the county.

(c) *Duties of county departments.* 1. Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child or unborn child is in need of protection or services. The investigation shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in sub. (1) (am) 1. to 4., or of a report that does not disclose who is suspected of the child abuse or neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling, the person making the investigation shall identify himself or herself and the agency involved to the child's parents, guardian or legal custodian. The agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

NOTE: Subd. 1. was held unconstitutional as applied by the U.S. 7th Circuit Court of Appeals in *Doe v. Heck*, 327 F.3d 492 (2003).

2. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with

an employee of the county department shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

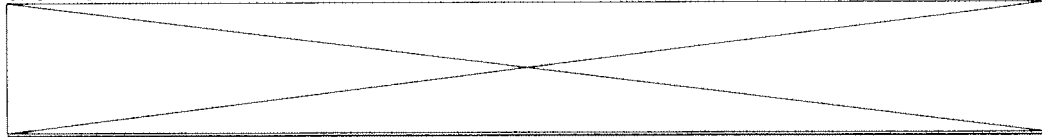
2m. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unborn child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the unborn child into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for

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treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any expectant mother of an unborn child. The agency shall update the record every 6 months until the case is closed.

5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of

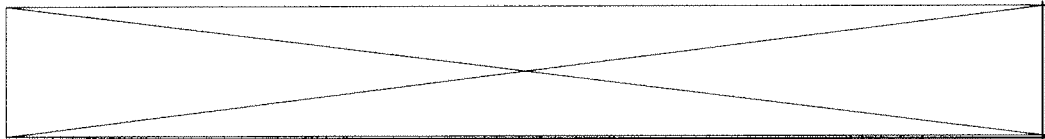
what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7) (e) and the penalties for failing to do so under sub. (7) (f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department. The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

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(cm) Contract with licensed child welfare agencies. A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2. b., 2m. b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2. a., 2m. b., 3., 4., 5., 5m., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

(d) *Independent investigation.* 1. In this paragraph, "agent" includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate the child welfare agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(4) *IMMUNITY FROM LIABILITY.* Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unborn child.

(5) *CORONER'S REPORT.* Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) *PENALTY.* Whoever intentionally violates this section by failure to report as required may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(7) *CONFIDENTIALITY.* (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by an agency and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. A child's foster parent, treatment foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or

report may not disclose any information that would identify the reporter.

5. A professional employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. A person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13

(3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd. 10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd. 10.

11m. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court-appointed special advocate designated under s. 48.236 (1) or person employed by a court-appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 48.07 (5), to the extent necessary for the court-appointed special advocate to perform the advocacy services specified in s. 48.236 (3) that the court-appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88 (2) (c).

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14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business.

14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(cr) 1. Notwithstanding par. (a) and subject to subd. 3., an agency may disclose to the general public a written summary of the information specified in subd. 2. relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical condition of the

child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public, in the performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated under sub. (3) or that child welfare services have been provided to the child or the child's family under this chapter.

c. A parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd. 2.

2. If an agency is permitted to disclose information under subd. 1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency may disclose all of the following information from its records:

a. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

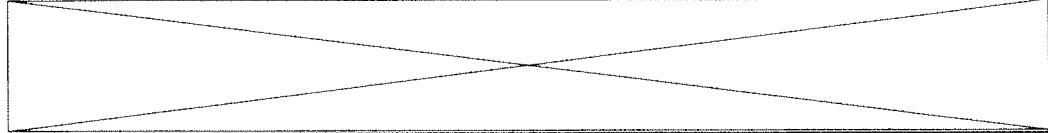
b. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

c. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

3. An agency may not disclose any of the information described in subd. 2. if any of the following applies:

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child

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residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding.

d. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

e. The investigation under sub. (3) of the report of the suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.

f. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal the identity of those persons has not previously been disclosed to the public.

g. Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

4. Any person who requests the information specified in subd. 2. under the circumstances specified in subd. 1. and whose request is denied may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd. 3. apply.

5. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or

refusing to disclose the information specified in subd. 2. under the circumstances specified in subd. 1. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than \$1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the tribal social services departments, persons and officials required to report, the general public, and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self-reporting and voluntary acceptance of services and to improve communication, cooperation, and coordination in the identification, prevention, and treatment of child abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of

treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and agency staff members and supervisors to satisfy the requirements under subd. 1. and s. 48.06 (1) (am) 3. and (2) (c).

(9) ANNUAL REPORTS. Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172 (2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each agency described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355, 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321.

Even if the authority for a warrantless search can be inferred from ch. 48, those provisions cannot supercede the constitutional provisions prohibiting unreasonable searches and seizures. *State v. Boggess*, 115 Wis. 2d 443, 340 N.W.2d 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. *State v. Hurd*, 135 Wis. 2d 266, 400 N.W.2d 42 (Ct. App. 1986).

Immunity under sub. (4) extends to reporters who report the necessary information to another who they expect to, and who does, report to proper authorities. Investigating the allegation prior to reporting does not run afoul of the immediate reporting requirement of sub. (3) and does not affect immunity. Allegations of negligence by reporters are not sufficient to challenge the good faith requirement of sub. (4). *Phillips v. Behnke*, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995).

To overcome the presumption of good faith under sub. (4), more than a violation of sub. (3) is required. It must also be shown that the violation was "conscious" or "intentional." *Drake v. Huber*, 218 Wis. 2d 672, 582 N.W.2d 74 (Ct. App. 1998), 96-2964.

This section provides no basis for civil liability against a person who may, but is not required to, report abuse. *Gritzner v. Michael R.* 2000 WI 68, 235 Wis. 2d 781, 611 N.W.2d 906, 98-0325.

To "disclose" information under sub. (7), the recipient must have been previously unaware of the information at the time of the communication. The state has the burden to prove beyond a reasonable doubt that the disclosure took place. Sub. (7) is a strict liability statute; intent is not an element of a violation. *State v. Polashek*, 2002 WI 74, 253 Wis. 2d 527, 646 N.W.2d 330, 00-1570.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) prevails over any inconsistent terms in s. 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professionals may report suspected child abuse under the permissive provisions of sub. (2) when the abuser, rather than victim, is seen in the course of professional duties. Section 51.30 does not bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section is discussed. 76 Atty. Gen. 286.

Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Atty. Gen. 84.

The responsibility of county departments of social services to investigate allegations of child abuse and neglect is discussed. Department staff members may interview a child on public school property and may exclude school personnel from the interview. School personnel cannot condition on-site interviews on notification of the child's parents. 79 Atty. Gen. 49.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. 81 Atty. Gen. 66.

County departments have authority to transport a child to a county-recognized child advocacy center for the purpose of an investigatory interview without consent of the primary caretaker, if to do so is necessary to an investigation of alleged child maltreatment. OAG 3-98.

The confrontation clause does not require a defendant's access to confidential child abuse reports; due process requires that the court undertake an in camera inspection of the file to determine whether it contains material exculpatory evidence. *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987).

To the extent sub. (3) (c) 1. authorizes government officials to interview children suspected of being abused on private property and without a warrant, probable cause, consent, or exigent circumstances, it is unconstitutional as applied. However, it can be constitutionally applied, such as when government officials interview a child on public school property when they have definite and articulable evidence giving rise to a reasonable suspicion that a child has been abused by his or her parents or is in imminent danger of parental abuse. *Doe v. Heck*, 327 F.3d 492 (2003).

This section does not authorize a private cause of action for failure to report. *Isley v. Capucian Province*, 880 F. Supp. 1138 (1995).

48.982 Child abuse and neglect prevention board.

(1) DEFINITIONS. In this section:

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(b) "Board" means the child abuse and neglect prevention board created under s. 15.195 (4).

(bm) "Cultural competency" means the ability of an individual or organization to understand and act respectfully toward, in a cultural context, the beliefs, interpersonal styles, attitudes and behaviors of persons and families of various cultures, including persons and families of various cultures who participate in services from the individual or organization and persons of various cultures who provide services for the individual or organization.

(c) "Neglect" has the meaning given in s. 48.981 (1) (d).

(d) "Organization" means a nonprofit organization, as defined under s. 108.02 (19), or a public agency which provides or proposes to provide child abuse and neglect prevention and intervention services or parent education.

(2) POWERS AND DUTIES. The board shall:

(a) Biennially, develop and transmit to the governor and the presiding officer of each house of the legislature a plan for awarding grants to organizations. The plan shall assure that there is an equal opportunity for establishment of child abuse and neglect prevention programs, early childhood family education centers and right from the start projects. The plan shall also ensure that the grants will be distributed throughout all geographic areas of the state and in both urban and rural communities. For grants provided under sub. (6), the plan shall also ensure that the grants are distributed based on population.

(b) Develop and publicize criteria for grant applications.

(c) Review and approve or disapprove grant applications and monitor the services provided under each grant awarded under subs. (4), (6) and (7).

(d) Solicit and accept contributions, grants, gifts, and bequests for the children's trust fund or for any other purpose for which a contribution, grant, gift, or bequest is made and received. Moneys received under this paragraph, other than moneys received under s. 341.14 (6r) (b) 6., may be credited to the appropriation accounts under s. 20.433 (1) (i) or (q). Interest earned on moneys received under s. 341.14 (6r) (b) 6. may be credited to the appropriation account under s. 20.433 (1) (q).

(e) Include as part of its annual report under s. 15.07 (6) the names and locations of organizations receiving grants, the amounts provided as grants, the services provided by grantees and the number of persons served by each grantee.

(f) Establish a procedure for an annual evaluation of its functions, responsibilities and performance. In a year in which the biennial plan under par. (a) is prepared, the evaluation shall be coordinated with the plan.

(g) In coordination with the departments of health and family services and public instruction:

1. Recommend to the governor, the legislature and state agencies changes needed in state programs, statutes, policies, budgets and rules to reduce the problems of child abuse and neglect, improve coordination among state agencies that provide prevention services and improve the condition of children and persons responsible for children who are in need of prevention program services.

2. Promote statewide educational and public informational seminars for the purpose of developing public awareness of the problems of child abuse and neglect.

3. Encourage professional persons and groups to recognize and deal with problems of child abuse and neglect.

4. Disseminate information about the problems of child abuse and neglect to the public and to organizations concerned with those problems.

5. Encourage the development of community child abuse and neglect prevention programs.

(gm) Provide, for use by the board in its statewide projects under sub. (5) and for use by organizations that receive grants under subs. (4), (6) and (7), educational and public informational materials and programming that emphasize the role of fathers in the primary prevention of child abuse and neglect.

(2e) NONSTOCK, NONPROFIT CORPORATION. (a) The board may organize and maintain a nonstock, nonprofit corporation under ch. 181 for the exclusive purpose of soliciting and accepting contributions, grants, gifts and bequests for the children's trust fund. Any contributions, grants, gifts or bequests accepted by the corporation shall be deposited in the children's trust fund and, in accordance with the wishes of the donor, shall be used for any of the purposes specified in sub. (2m) or shall continue to accumulate in the children's trust fund pursuant to s. 25.67 (2).

(b) The board shall enter into a contract with any corporation organized and maintained under par. (a). The contract shall provide that the board may make use of the services of the corporation and that the board may provide administrative services to the corporation. The type and scope of any administrative services provided by the board to the corporation and the board employees assigned to perform the services shall be determined by the board. The corporation may neither employ staff nor engage in political activities.

(c) The corporation under par. (a) shall donate any real property to the state within 5 years after acquiring the property unless holding the property for more than 5 years is consistent with sound business and financial practices and is approved by the joint committee on finance.

(d) The board, the department of administration, the legislative fiscal bureau, the legislative audit bureau and the

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appropriate committee of each house of the legislature, as determined by the presiding officer, may examine all records of the corporation.

(e) The board of directors of any corporation established under this subsection shall consist of 5 members, including the chairperson of the board and 4 members of the board, elected by the board, of which one shall be a legislator. No 2 members of the board of directors may be from the same category of board members under s. 15.195 (4) (a) to (g).

(f) Any corporation established under this subsection shall be organized so that contributions to it will be deductible from adjusted gross income under section 170 of the Internal Revenue Code, as defined under s. 71.01 (6), and so that the corporation will be exempt from taxation under section 501 of the Internal Revenue Code, as defined under s. 71.22 (4), and under s. 71.26 (1) (a).

(2m) DONATION USES. If money is accepted by the board for the children's trust fund or for any other purpose under sub. (2) (d) and appropriated under s. 20.433 (1) (q), the board shall use the money in accordance with the wishes of the donor to do any of the following:

- (a) Award grants under subs. (4), (6) and (7).
- (b) Pay for actual and necessary operating costs under sub. (3).
- (c) Fund statewide projects under sub. (5).

(3) STAFF AND SALARIES. The board shall determine the qualifications of and appoint, in the classified service, an executive director and staff. The salaries of the executive director and staff and all actual and necessary operating expenses of the board shall be paid from the appropriations under s. 20.433 (1) (g), (i), (k), (m), and (q).

(4) AWARD OF GRANTS. (a) From the appropriations under s. 20.433 (1) (b), (h), (i), (k), (m), and (q), the board shall award grants to organizations in accordance with the plan developed under sub. (2) (a). In each of the first 2 fiscal years in which grants are awarded, no organization may receive a grant or grants totaling more than \$30,000.

(b) A grant may be awarded only to an organization that agrees to match the grant, through money or in-kind services, as follows:

1. During the first year of the grant, at least 25% of the amount received for that year.
2. During the 2nd and subsequent years of a grant, at least 50% of the amount received for each year.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) The board shall award grants to organizations for programs for the primary prevention of child abuse and neglect, including, but not limited to:

1. Programs to promote public awareness of the need for the prevention of child abuse and neglect.

2. Community-based programs on education for parenting, prenatal care, perinatal bonding, child development, care of children with special needs and coping with family stress.

3. Community-based programs relating to crisis care, early identification of children at risk of child abuse or neglect, and education, training and support groups for parents, children and families.

(e) In determining which organizations shall receive grants, the board shall consider whether the applicant's proposal will further the coordination of child abuse and neglect services between the organization and other resources, public and private, in the community and the state.

(5) STATEWIDE PROJECTS. From the appropriations under s. 20.433 (1) (i) and (q), the board shall administer any statewide project for which it has accepted money under sub. (2m) (c).

(6) AWARD OF EARLY CHILDHOOD FAMILY EDUCATION CENTER GRANTS. (a) From the appropriations under s. 20.433 (1) (b), (h), (i), (k), (ma), and (q), the board shall award grants to organizations in accordance with the request-for-proposal procedures developed under sub. (2) (a). No organization may receive a grant or grants under this subsection totaling more than \$150,000 in any year.

(am) Notwithstanding the geographical and urban and rural distribution requirements under sub. (2) (a), the board shall allocate \$75,000 from the appropriation under s. 20.433 (1) (h) in each fiscal year for the awarding of grants, in accordance with the request-for-proposal procedures developed under sub. (2) (a), to organizations located in counties with a population of 500,000 or more.

(b) A grant may be awarded only to an organization that agrees to make a 20% match to the grant, through either money or in-kind services.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) The board shall award grants to organizations for programs that provide parenting education services but not crisis intervention. Grants shall be used for direct parent education and referrals to other social services programs and outreach programs, including programs that provide education to parents in their homes. For organizations applying for grants for the first time on or after July 1, 1998, the board shall give favorable consideration in awarding grants to organizations for

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programs in communities where home visitation programs that provide in-home visitation services to parents with newborn infants are in existence or are in development and, if grants are awarded, shall require programs supported by grants to maximize coordination with these home visitation programs. Programs supported by the grants shall track individual clients to ensure that they receive necessary services and shall emphasize direct services to families with children who are 3 years of age or less.

(e) Grants awarded under this subsection may not supplant any other funding for parenting education.

(f) By March 1, 1991, the board shall submit a report to the chief clerk of each house of the legislature for distribution to the appropriate standing committees on children, in the manner provided in s. 13.172 (3). The report shall include all of the following information about grants made under this subsection:

1. The number of grants made.
2. The name of all grant recipients.
3. The number of children served.
4. Whether or not each grant recipient achieved its stated goals.

(7) AWARD OF RIGHT FROM THE START GRANTS. (a) From the appropriations under s. 20.433 (1) (b), (h), (i), (k), and (q), the board shall award grants to organizations in accordance with the plan developed under sub. (2) (a).

(b) A grant may be awarded only to an organization that agrees to make a 30% match to the grant, through either money or in-kind services.

(c) Each grant application shall include proof of the organization's ability to comply with par. (b). Any in-kind services proposed under par. (b) are subject to the approval of the board.

(d) Each grant application shall include proof that the organization has the cultural competency to provide services under the grant to persons and families in the various cultures in the organization's target population and that cultural competency is incorporated in the organization's policies, administration and practices. Each grant application shall also include proof of the organization's ability to do all of the following:

1. Maximize the coordination of new and existing family support, educational and health services and minimize the duplication of those services by coordinating and collaborating with other organizations in the planning and provision of the organization's right from the start project.

2. Provide programs that identify and build on a family's strengths and that encourage a family to become independent from the organization's right from the start project and other human services programs.

3. Provide culturally competent outreach services.

4. Provide or coordinate the provision of the community-based outreach, educational and family support services of an early childhood family education center.

(e) The board shall award grants to organizations for programs that provide parenting education services but not crisis intervention. A program supported by a grant shall provide culturally competent outreach services to persons who are the parents of a newborn infant. A program supported by a grant shall emphasize direct services to families with children who are 3 years of age or less and shall provide or coordinate the provision of the community-based outreach, educational and family support services of an early childhood family education center. The board shall provide technical assistance to organizations receiving grants under this subsection.

(f) Grants awarded under this subsection may not supplant any other funding for parenting education.

(fg) An organization that receives a grant under this subsection and under sub. (6) may not use the grant moneys received under this subsection to provide any services that the organization provides under the grant received under sub. (6).

(g) By September 1, 1995, the board shall submit a report to the appropriate standing committees under s. 13.172 (3). The report shall include all of the following information about grants made under this subsection:

1. The number of grants made.
2. The name of all grant recipients.
3. The number of children served.
4. Whether or not each grant recipient achieved its stated goals.

(h) The board shall conduct an evaluation of the effectiveness of the right from the start grant program under this subsection in achieving its stated goals and, by January 2, 1997, submit a report on that evaluation to the appropriate standing committees under s. 13.172 (3).

History: 1983 a. 27; 1983 a. 109 s. 6; 1985 a. 29 ss. 930s, 3202 (8); 1987 a. 27, 184, 255; 1989 a. 31, 336; 1991 a. 32, 39; 1993 a. 16, 437, 444, 491; 1995 a. 27 ss. 2622 to 2623d, 9126 (19); 1995 a. 275; 1997 a. 27, 78, 252, 293; 1999 a. 9; 2001 a. 16; 2005 a. 25.

48.985 Expenditure of federal child welfare funds.

(1) FEDERAL PROGRAM OPERATIONS. From the appropriation under s. 20.435 (3) (n), the department shall expend not more than \$273,700 in each fiscal year of the moneys received under 42 USC 620 to 626 for the department's expenses in connection with administering the expenditure of funds received under 42 USC 620 to 626 and for child abuse and neglect and unborn child abuse independent investigations.

(2) COMMUNITY SOCIAL AND MENTAL HYGIENE SERVICES. From the appropriation under s. 20.435 (7) (o), the department

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shall distribute not more than \$3,809,600 in each fiscal year of the moneys received under 42 USC 620 to 626 to county departments under ss. 46.215, 46.22, and 46.23 for the provision or purchase of child welfare projects and services, for services to children and families, for services to the expectant mothers of unborn children, and for family-based child welfare services.

(3) **COMMUNITY YOUTH AND FAMILY AIDS.** From the appropriation account under s. 20.410 (3) (ko), the department of corrections shall allocate, to county departments under ss. 46.215, 46.22 and 46.23 for the provision of services under s. 301.26, not more than \$1,100,000 in each fiscal year.

(4) **RUNAWAY SERVICES.** From the appropriation under s. 20.435 (3) (na) for runaway services, not more than \$458,600 in each fiscal year.

(5) **MILWAUKEE CHILD WELFARE AIDS.** Of the amounts received under 42 USC 620 to 626 and credited to the appropriation account under s. 20.435 (3) (nL), the department shall transfer \$58,600 in fiscal year 2001-02 and \$66,800 in fiscal year 2002-03 to the appropriation account under s. 20.435 (3) (kw) and shall expend those moneys to provide services to children and families under s. 48.48 (17).

History: 1987 a. 27, 1989 a. 31, 107, 1991 a. 39, 269, 1993 a. 16, 446, 1995 a. 27, 1997 a. 27, 292, 1999 a. 9, 2001 a. 16, 2003 a. 33.

48.987 Earnings of self-supporting minors. During any time when a parent of a minor neglects or refuses to provide for the minor's support, or support and education, the earnings of the minor shall be the minor's sole property as against such parent or any creditor of such parent.

History: 1977 c. 354 s. 94; Stats. 1977 s. 48.987, 1991 a. 316.

48.988 Interstate compact on the placement of children. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

(1) **ARTICLE I - PURPOSE AND POLICY.** It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information

on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

(2) **ARTICLE II - DEFINITIONS.** As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Placement" means the arrangement for the care of a child in a family free or boarding home, in a child-caring agency, or in a residential care center for children and youth, but does not include any institution caring for the mentally ill, mentally defective, or epileptic, any institution primarily educational in character, or any hospital or other medical facility.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings or causes to be sent or brought any child to another party state.

(3) **ARTICLE III - CONDITIONS FOR PLACEMENT.** (a) No sending agency shall send, bring or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this subsection and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

1. The name, date and place of birth of the child.
2. The identity and address or addresses of the parents or legal guardian.
3. The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring or place the child.
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to par. (b) may request of the

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sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

(4) ARTICLE IV - PENALTY FOR ILLEGAL PLACEMENT. The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

(5) ARTICLE V - RETENTION OF JURISDICTION. (a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and

maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in par. (a).

(6) ARTICLE VI - INSTITUTIONAL CARE OF DELINQUENT CHILDREN. A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to being sent to such other party jurisdiction for institutional care and the court finds that:

(a) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(b) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

(7) ARTICLE VII - COMPACT ADMINISTRATOR. The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his or her jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

(8) ARTICLE VIII - LIMITATIONS. This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

(9) ARTICLE IX - ENACTMENT AND WITHDRAWAL. This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under, this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

(10) **ARTICLE X - CONSTRUCTION AND SEVERABILITY.** The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11) Financial responsibility for any child placed under the interstate compact on the placement of children shall be determined in accordance with sub. (5) in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of s. 49.90 or 767.42, ch. 769 or any other applicable state law fixing responsibility for the support of children also may be invoked.

(14) The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under sub. (5) (b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in the case of the state.

(15) Any requirements for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by sub. (5) (b).

(16) Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under sub. (5) and shall retain jurisdiction as provided in sub. (5).

History: 1977 c. 354; Stats. 1977 s. 48.99; 1977 c. 447; Stats. 1977 s. 48.988; 1981 c. 390; 1983 a. 189; 1985 a. 29 s. 3202 (23); 1987 a. 403; 1993 a. 326; 1997 a. 104; 1999 a. 32; 2001 a. 59.

48.989 Interstate compact on the placement of children: additional procedure. (1) **DEFINITIONS.** In this section and in s. 48.988:

(a) "Appropriate authority in the receiving state" means the department of health and family services.

(b) "Appropriate public authorities" means the department of health and family services, which shall receive and act with reference to notices required by s. 48.988 (3).

(c) "Executive head" means the governor.

(2) **FINANCIAL RESPONSIBILITY.** Financial responsibility for any child placed under the provisions of the interstate compact on the placement of children shall be determined in accordance with ss. 48.60 (4) (b) and 48.988 (5). In the event of partial or complete default of performance under the compact, the provisions of s. 49.90 or 767.42, ch. 769 or any other applicable state law fixing responsibility for the support of children may also be invoked.

(3) **INTERSTATE AGREEMENTS.** The officers and agencies of this state and its subdivisions having authority to place children may enter into agreements with appropriate officers or agencies of or in other party states under s. 48.988 (5) (b). Any agreement which contains a financial commitment or imposes a financial obligation on this state or any subdivision or agency thereof shall not be binding unless it has the approval in writing of the department in matters involving the state and of the chief local fiscal officer in matters involving a subdivision of the state.

(4) **REQUIREMENTS.** Any requirement for visitation, inspection or supervision of children, homes, institutions or other agencies in another party state which may apply under the provisions of this chapter shall be deemed to be met if performed under an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof under s. 48.988 (5) (b).

(5) **COURT JURISDICTION.** Any court having jurisdiction to place delinquent children may place such a child in an institution or in another state under s. 48.988 (5). The court shall retain jurisdiction as provided in s. 48.988 (5).

History: 1977 c. 354; Stats. 1977 s. 48.995; 1977 c. 447; Stats. 1977 s. 48.989; 1981 c. 390; 1985 a. 29 s. 3202 (23); 1989 a. 31; 1993 a. 326; 1995 a. 27 s. 9126 (19).

48.9985 Interstate adoption agreements. (1)

DEFINITIONS. In this section:

(a) "Adoption assistance agreement" means an agreement under s. 48.975 with a child's adoptive parents to provide specified benefits, including medical assistance, to the child, or a similar agreement in writing between an agency of another state and the adoptive parents of a child adopted in that state, if the agreement is enforceable by the adoptive parents.

(b) "Medical assistance" has the meaning given under s. 49.43 (8).

(c) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin

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Islands, Guam, the commonwealth of the Northern Mariana Islands or a territory or possession of the United States.

(2) INTERSTATE AGREEMENTS AUTHORIZED. (a) The department may, on behalf of this state, enter into interstate agreements, including the interstate compact on adoption and medical assistance, with agencies of any other states that enter into adoption assistance agreements.

(b) Each interstate agreement shall provide that, upon application by a person who has entered into an adoption assistance agreement with a party state other than the person's state of residence, the state of the person's residence shall provide medical assistance benefits under its own laws to the person's adopted child.

(c) An interstate agreement may also include the following:

1. Procedures for ensuring the continued provision of developmental, child care and other social services to adopted children whose adoptive parents reside in a party state other than the one in which the adoption assistance agreement was entered into.

2. Any other provisions determined by the department and the agency of the other party state to be appropriate for the administration of the interstate agreement.

(d) An interstate agreement is revocable upon written notice by either party state to the other party state but remains in effect for one year after the date of the written notice.

(e) Each interstate agreement shall provide that the medical assistance benefits to which a child is entitled under the provisions of the interstate agreement shall continue to apply until the expiration of the adoption assistance agreement entered into by the adoptive parents in the state in which the adoption took place, whether or not the interstate agreement is revoked under par. (d).

History: 1985 a. 308, 332.

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